U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 0 5 2015

FILE #:
PETITION RECEIPT #:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

NO REPRESENTATIVE OF RECORD

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the Form I-140, Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, the petitioner seeks employment as an engineer to work on "Development of Linguistic Mobile Applications." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The petitioner submits additional evidence on appeal.

I. Law

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national

interest waiver. First, a petitioner must establish that the beneficiary seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the beneficiary will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the beneficiary's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the beneficiary, rather than to facilitate the entry of a beneficiary with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

II. Facts and Analysis

The petitioner filed the Form I-140 on November 14, 2013, indicating that his proposed work as an engineer will involve developing "Linguistic Mobile Applications." The petitioner submitted several letters from past employers attesting to his work experience as a Russian language translator and interpreter, and as a computer systems analyst and programmer analyst. None of the letters indicated that the petitioner's past employment had involved the development of linguistic mobile applications. A March 15, 2011, letter from Illinois, stated that the petitioner was employed as a full-time senior programmer analyst from October 2008 to August 2009, during which time his duties were to "Plan, Design, Develop, Test and Document Applications Software." However, the letter did not identify the nature of the applications software on which the petitioner had worked, or describe what effect, if any, they had on the field. Other letters indicated that the petitioner's employment as a translator and interpreter included translating technical and scientific subject matter from Russian to English.

Accompanying the Form I-140, the petitioner also submitted evidence that he earned a Bachelor's and a Master's degree in computer engineering from a university in Ukraine in 1999 and 2001, respectively, and that he was granted F-1 student status in the United States in 2006 to pursue a Ph.D. in Computer Science from .

The director issued a request for evidence (RFE) on May 30, 2014, requesting additional evidence to demonstrate that the benefits of the proposed employment would be national in scope and to establish that the petitioner had a history of achievement with some degree of influence on the field.

In a statement responding to the RFE, the petitioner stated, "There is a lot more to improve on Translations and Technologies using computer languages as a base for human language automation on a variety of handy mobile devices." As evidence of the national scope of his proposed work, the petitioner submitted an excerpt from the website of the National Virtual Translation Center (NVTC), an organization that provides "translations of foreign intelligence for U.S. agencies." The excerpt described the importance of the role that NVTC's language specialists play in the U.S. intelligence

community. Under the heading of "Translation: NATIONAL SCOPE," the petitioner also submitted marketing and promotional images related to companies offering translation services, and a Department of Defense slide presentation regarding the government's need for language technology. The petitioner did not claim or submit evidence establishing that he has any past or present connection with NVTC, the Department of Defense, or any translation services company.

As evidence relating to his past record of achievement, the petitioner submitted copies of photographs, identified as depicting the petitioner "[w]ith Russian Specialists, Experts & Professors (in the fields of Science, Technology & Engineering)," and in various locations to which he traveled in his capacity as a translator. The petitioner also submitted numerous other advertising images, graphics, and website excerpts relating to language and translation. In his statement responding to the RFE, the petitioner indicated that these images are intended to provide "an overview of Translation as a Profession in various topics." The images were grouped by category, including such headings as "National Economy Translations," "National Space Program Translations," "Scientific Research Translations," "Future of Translation," and many others.

In addition, in response to the RFE, the petitioner submitted notes and documentation relating to a dispute with a former employer, , that filed a Form I-129, Petition for a Nonimmigrant Worker, on his behalf and later withdrew the petition. Finally, the petitioner submitted a March 17, 2010, job offer letter from Illinois, offering the petitioner a "Senior Application Developer" position. The letter did not specify the nature of the projects that the petitioner would work on, nor did the petitioner submit evidence that he was ever in fact employed by LLC.

The director denied the Form I-140 on September 30, 2014, finding that the petitioner had established the substantial intrinsic merit of his area of proposed employment under the first prong of *NYSDOT*, but that he had not established that the proposed benefits would be national in scope, or that the petitioner would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications under the second and third prongs, respectively. The director found that the submitted evidence did not address what influence, if any, the petitioner's past achievements had on the field of linguistic mobile applications.

The petitioner submits a statement on appeal. In addition, the petitioner submits a Form ETA 750 Part B, Statement of Qualifications of Alien; copies of the petitioner's online records from , dated February 23, 2011, indicating acceptance of transfer credits towards a Ph.D. in Information Technology; a November 19, 2010, job offer email from , in , Illinois; copies of online job postings from various government agencies and other organizations seeking Russian linguists and computational linguists; and copies of quotes that emphasize the value of deeds over words.

The petitioner states on appeal that the director erred in finding that he had not established the national scope of the benefits of his proposed work. The petitioner states:

> As evidence shows the national significance would be: Serving Government needs, Emergency needs of Citizens locally/nationally/internationally in the modern world, nuclear and space ages as a whole. Promoting International trade with the largest natural resource giant would have national significance if properly utilized/promoted as per needs.

The petitioner has submitted evidence generally relating to the use of, and need for, translation services and technology in a wide variety of contexts, including those named on appeal. However, the petitioner has not provided information or evidence about the linguistic mobile applications he proposes to develop, such as what functions they would offer, which languages they would translate, or how they would improve on existing mobile translation applications. While government entities, trade organizations, private citizens, and others may rely on translation services and technologies, the petitioner has not submitted evidence to explain how his proposed mobile applications in particular would meet those needs. Without additional evidence about the products that the petitioner intends to develop, we cannot determine that the benefits of their development would be national in scope. Accordingly, we agree with the director's finding that the petitioner has not met the second prong of *NYSDOT*.

With regard to the third prong of *NYSDOT*, the petitioner contends on appeal that he would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications:

> The level that would set me apart from engineers in the field would be [my] capability to:
>
> - Program Linguistic Software addressing all the software needs of the Language Industry
> - PhD Qualifications Approach (research & development) and Quality Proving Standards (Analytical decisions with evidences)
> - Russian language experience for 20 years (1994-2014)
> - Intercontinental adaptation, service to diverse needs of society with wide range of experiences
> - Proven services to Specialists, Scientists, Professors & Industry Managers/Directors
> - Earning Respect and admiration are some of the important keys to be Successful in the industry

The evidence indicates that the petitioner has previous employment experience as a Russian translator and interpreter and as a software developer, and that the petitioner's educational background is relevant to his proposed endeavor. However, none of the evidence regarding the petitioner's past employment or education establishes that he has experience developing linguistic software, nor does the submitted evidence establish the significance of his achievements as a linguist or a software developer. Accordingly, the petitioner has not established that he has a past record of achievement in the field that justifies projections of future benefit to the national interest. *See NYSDOT* at 219.

As an alternative argument on appeal, the petitioner states that it is unrealistic and unfair to expect him to be able to show influence on the field when he has been unable to obtain the immigration status and employment authorization he would need to work in the field. The petitioner states that the actions of and U.S. Citizenship and Immigrations Services (USCIS) have hindered his educational and professional career "by not fixing the errors on-time nor resolving them appropriately." The petitioner therefore requests that USCIS "waive me the requirements not submitted and grant me the Permanent Residency."

The petitioner did not specifically identify the asserted errors made by USCIS in previous proceedings. Regardless, in visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this instance, the relevant law and regulations provide that the job offer and labor certification requirements may be waived only when doing so would be in the national interest. The AAO does not have authority under the Act or the regulations to make any exception to this requirement.

III. Conclusion

The petitioner has not established that the benefits of his proposed work would be national in scope, nor has he established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

As is clear from the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, at 128. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.